IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12534 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

D.L.MINES THRO.PROPRIETOR LADUJI MERAJI VANZARA

Versus

MAMLATDAR HIMMATNAGAR

Appearance:

1. Special Civil Application No. 12534 of 2004

MR JV JAPEE for Petitioner No. 1

MR PR ABICHANDANI, AGP for Respondent No. 1-3

MR MA BUKHARI for SHRIKAR H BHATT

for Respondent No. 4-5

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 17/02/2005

ORAL JUDGEMENT

#. Rule. Mr.Abichandani, learned AGP, waives service of rule on behalf of the respondent Nos.1 to 3 and Mr.Bukhari waives service of rule for respondent nos.4 and 5.

#. With the consent of the learned advocates for the respective parties, the matter is taken up for final hearing today.

#. In this petition filed under Article 226 of the Constitution of India, the petitioner - lessee of the land bearing Survey No.101/A paiki situated at Savgadh, Taluka Himatnagar, District Sabarkantha, has prayed for appropriate writ, order or direction directing respondent nos.1 and 2, i.e. Mamlatdar and Collector, Sabarkantha to carry on further proceedings to hand over the vacant possession of the land in question to the petitioner in pursuance of the quarry lease granted to the petitioner in due compliance of the order passed by this Court in Special Civil Application No.15553 of 2003 and also the order passed by the State Government dated 25.8.2004.

#. It is the case of the petitioner that by order dated 26.10.1999, respondent No.2 - Collector, Sabarkantha had granted quarry lease in favour of the petitioner with regard to the land in question for the purpose of mining. In view of the fact that respondent nos.4 and 5 have encroached upon the Government land, more particularly, the land which has been leased to the petitioner and as respondent nos.4 and 5 had filed one civil suit, respondent nos.1 and 2 were not handing over the actual possession of the land in question only on that ground and, therefore, the petitioner preferred Special Civil Application No.15553 of 2003 making the grievance that though the petitioner has been granted lease in respect of the land in question, the possession of the land in question is not being given to the petitioner and after hearing the learned advocates appearing for the petitioner as well as respondents herein, the learned Single Judge (Coram: A.R.Dave,J) by his order dated 9.3.2004 allowed the aforesaid petition directing the respondent authority to hand over the possession of the land in question to the petitioner if it is held by the State Government that encroachment made by respondent nos.3 and 4 (respondent nos.4 and 5 herein) should not be regularised.

#. It appears from the record that, being aggrieved and dissatisfied with the order passed by the Collector, Sabarkantha dated 26.10.1999 granting quarry lease in favour of the petitioner with regard to the land in

question, respondent nos.4 and 5 have preferred the appeal before the Appellate Authority and the Appellate Authority allowed the said appeal quashing and setting aside the lease in favour of the petitioner, against which the petitioner preferred the revision application before the State Government which came to be allowed and as the said revision application was allowed without giving opportunity to respondent nos.4 and 5 herein, they preferred Special Civil Application No.907 of 2004 before this Court which also came to be heard by the learned Single Judge (Coram: A.R.Dave,J) who by his order dated 9.3.2004 quashed and set aside the order passed by the revisional authority and remanded the matter to the revisional authority for deciding the revision application filed by the petitioner in accordance with law and after giving opportunity to respondent nos.4 and 5.

#. It is the case of the petitioner that, thereafter, the State Government has decided the revision application by its order dated 25.8.2004 and the order passed by the Appellate Authority cancelling the lease has been quashed and set aside and the order passed by the Collector, Sabarkantha dated 26.10.1999 has been restored and in spite of the aforesaid fact, as, the possession of the land in question was not handed over to the petitioner, the petitioner has preferred the present petition with the aforesaid reliefs.

#. The present petition came up for hearing before the learned Single Judge of this Court for admission hearing on 17.12.2004 and this Court (Coram: Jayant Patel,J) passed the following order.:

"1. Upon hearing Mr.Japee, learned counsel for the petitioner, Mr.Bhatt, learned counsel for respondents no. 4 and 5 and Ms.Chandarana, learned AGP for the State authorities, it appears that as per the order passed by the State Government dated 25.8.2004 the application for mining lease is granted in favour of the petitioner and the prayer of respondents no. 4 and 5 to regularise the encroachment is not granted. However, such decision is made subject to the outcome of the Civil Suit no. 256/1999. It is an admitted position that in the said civil suit no injunction has been granted by the Civil Court in favour of respondents no. 4 and 5.

2. Under the circumstances, merely because

respondents no. 4 and 5 are pursuing the remedy for regularisation of the encroachment cannot be said as a valid ground not to part with the possession of the land which is encroached by them. Mr.Bhatt, learned counsel for respondent no.4 & 5 submitted that the land is adjacent to the land of the petitioner and if the land is used for mining purpose, it may damage the crops and the agricultural land of respondents no. 4 and 5 and, therefore, he submitted that the land may not be allowed to be used for mining purpose.

3. It appears that whether the petitioner should be allowed to use the land for mining purpose or not is the question which will be subsequently considered by the Court, but respondents no. 4 and 5 who are in unauthorised occupation of the government land must vacate the same even if they are desirous to see that the land may not be allowed to the petitioner for mining operation. Mr.Bhatt submitted that as on today there are standing crops over the land and respondents no. 4 and 5 may be allowed to harvest the crops.

Under the above circumstances, respondents no. 4 and 5 will be at liberty to harvest the crops latest by 30-1-2005 and respondents no. 4 and 5 shall hand over the possession of the land in question to the District Collector, Sabarkantha at Himatnagar or the Officer who may be authorised for such purpose by the District Collector. In case the possession is not handed over by 7.2.2005, the District Collector shall take possession of the land in question from respondents no. 4 and 5 on or before 14.2.2005 and shall report to this Court on 17.2.2005. He shall also report to this Court as to whether any mining operation over the land is to cause any harm to the adjacent agricultural land or to the life of the residents of the area.

S.O. to 17.2.2005 for passing further orders. Direct service is permitted."

#. It appears from the record that against the aforesaid order and with regard to the directions issued by the learned Single Judge to take the possession of the land in question from respondent nos.4 and 5, respondent nos.4 and 5 had preferred Letters Patent Appeal before the Division Bench of this Court and the Division Bench of

this Court, while admitting the aforesaid Letters Patent Appeal No.74 of 2005, has passed the following order in Civil Application No.492 of 2005 which reads as under.:

" Rule. Learned Counsel Shri Japee, appearing on Caveat, waives service of Rule for opponent no. 1. On the joint request of learned counsel for the parties, without assigning any reason, ad-interim relief is granted in terms of para 3(A). However, it is clarified that grant of ad-interim relief will not come in the way of learned single Judge in proceeding further with the matter on 17.2.2005 and decide it either way. D.S.permitted."

That is how, now the special civil application is being decided by this Court.

#. Mr.Japee, learned advocate appearing for the petitioner, has submitted that in view of the fact that now the order passed by the Collector, Sabarkantha dated 26.10.1999 granting quarry lease in favour of the petitioner has been confirmed by the State Government by its order dated 25.8.2004, respondent nos.1 and 2 are bound to hand over the possession of the land in question to the petitioner. It is, therefore, submitted to allow the present petition. It is further submitted that in spite of the fact that there is no injunction granted by the trial Court in the suit which is filed by respondent nos.4 and 5, only on the ground that the suit is pending, respondent nos.1 and 2 for some ulterior reason are not handing over the possession of the land in question to the petitioner in spite of the order of the Collector granting the quarry lease to the petitioner being confirmed by the State Government. It is further submitted that so far as respondent nos.4 and 5 are concerned, they have encroached upon the Government land and they have no right to continue in the land in question.

##. Mr.P.R.Abichandani, learned AGP, appears for respondent nos.1 and 3. In pursuance of the order passed by this Court dated 17.12.2004 in the aforesaid special civil application, the report is submitted by the Collector, Sabarkantha in which it is stated that in view of the prevailing position as on today, it is not in the interest of village people and the residents to have mining lease in the land in question, i.e. land bearing Survey No.101/A paiki for which lease is granted in favour of the petitioner. He submitted that the aforesaid report is submitted in pursuance of the order

passed by this Court dated 17.12.2004. It is further submitted that in view of the aforesaid facts, the possession of the land in question cannot be handed over to the petitioner. He further submitted that so far as respondent nos.4 and 5 are concerned, they are encroachers and they have encroached upon the Government land and they have no right to continue in the land in question.

##. Mr.M.A.Bukhari, learned advocate, appears for respondent nos.4 and 5. He submitted that so far as respondent nos.4 and 5 are concerned, they are in occupation of the land in question since 1950 and they have already filed the civil suit before the trial Court for the purpose of declaration and permanent injunction, and, therefore, the possession of the land in question cannot be handed over to the petitioner. It is also submitted that in view of the fact that the petitioner is the owner of even adjacent land bearing Survey No.101/A paiki for which lease is granted in favour of the petitioner and if mining activities will be there by blasting, it will ultimately affect the agricultural land of the petitioner and it may damage the crops and agricultural lands. Therefore, it is requested to dismiss the present petition.

##. Heard the learned advocates for the parties.

##. It is not in dispute that the order passed by the Collector, Sabarkantha granting quarry lease in favour of the petitioner in respect of the land in question is at present confirmed by the State Government by its order dated 25.8.2004. It is also not in dispute that the said order is not challenged by respondent nos.4 and 5 and the said order has become final. It is also not in dispute that there is no injunction granted by the trial Court in the suit which is filed by respondent nos.4 and 5. It is not in dispute that there is a direction issued by this court in its order dated 9.3.2004 in Special Civil Application No.15553 of 2003 by which the respondent authorities are directed to hand over the possession of the land in question to the petitioner if it is held by the State Government that encroachment made by respondent nos.4 and 5 should not be regularised. There is no decision as on today taken by the State Government regularising encroachment made by respondent nos.4 and 5 with regard to the land in question. However, it is the case of respondent nos.4 and 5 that they have become the owners by adverse possession for which they have filed the suit and have prayed for injunction which is not granted till date. Under the circumstances, merely

because the suit is pending, it is no ground by respondent nos.1 and 2 not to hand over the possession of the land in question for which quarry lease is granted in his favour which is confirmed by the State Government at present.

##. Under the circumstances, respondent nos.1 and 2 are directed to hand over the possession of the land in question to the petitioner for which quarry lease is granted in favour of the petitioner by order dated 26.10.1999 if there is no order passed by any other court restraining respondent nos.1 and 2 from handing over the possession of the land in question to the petitioner and/or restraining respondent nos.1 and 2 from taking the possession of the land in question from respondent nos.4 and 5. If there is no injunction by any other court then, respondent nos.1 and 2 are directed to hand over the possession of the land in question to the petitioner within a period of four weeks from the date of the receipt of the writ of this order. So far as possession of respondent nos.4 and 5 is concerned, as stated above, if there is no injunction granted in favour of respondent nos.4 and 5, respondent nos.1 and 2 and the appropriate authority are at liberty to take appropriate action on its own merits and in accordance with law with regard to taking over the possession from respondent nos.4 and 5. As on today, they are in illegal occupation of the land in question and they have encroached upon the Government land. It is also made clear that by virtue of the aforesaid order, appropriate authority more particularly, respondent nos.1 to 3 are not precluded from reconsidering their decision with regard to the quarry lease granted in favour of the petitioner with respect to the land bearing Survey No.101/A paiki for which quarry lease is granted in favour of the petitioner as per the report submitted by the Collector, Sabarkantha dated 15.2.2005 which is submitted in pursuance of the direction issued by this court vide order dated 17.12.2004 to the effect that it will not be in the interest of the residents and the village people to have mining lease in the land in question, i.e. land bearing Survey No.101/A paiki for which quarry lease is granted in favour of the petitioner and the same can be done in accordance with law and on merits after giving opportunity to the petitioner and the concerned parties.

##. For the reasons stated above, this petition is allowed. Rule is made absolute with no order as to costs. Direct service is permitted.

(M.R.Shah,J)

(pathan)